

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

INNOVATION VENTURES, LLC f/d/b/a
LIVING ESSENTIALS, a Michigan
limited liability company,

Plaintiff/Counter-Defendant,

v.

Case No. 12-13850
Hon. Terrence G. Berg

CUSTOM NUTRITION LABORATORIES,
LLC, a Texas limited liability company,

Defendant,

and

NUTRITION SCIENCE LABORATORIES,
LLC, a Texas limited liability company,
and ALAN JONES,

Defendants/Counter-Plaintiffs.

**ORDER GRANTING IN PART PLAINTIFF'S MOTION
FOR PROTECTIVE ORDER AND TO COMPEL DISCOVERY (DKT. 127)**

On September 11, 2013, Plaintiff filed a Motion for Protective Order and to Compel Discovery (Dkt. 127). Plaintiff seeks a protective order to excuse its President, Scott Henderson, from attendance at a deposition currently noticed for 10:00AM tomorrow, September 13, 2013. Plaintiff is also seeking an order compelling responses to certain discovery.

The Court has thoroughly reviewed the motion and its attached exhibits. The pertinent facts are as follows: On August 6, 2013, Plaintiff provided Mr. Henderson's name in answer to an interrogatory seeking the identities of possible trial witnesses (Dkt 127, Pl. Mot. at 5). On August 22, 2013, Defendant first

expressed its intension to depose Mr. Henderson (Dkt. 127, Ex. 7). On September 4, 2013, Defendant served Plaintiff with notice of Mr. Henderson's deposition, setting the deposition for September 13, 2013, the last date for discovery related to the bifurcated issue of whether any of NSL's Energy Liquid products contain an allegedly prohibited ingredient from the Choline Family (Dkt 127, Ex. 8). On September 6, 2013, counsel for Plaintiff promptly informed Defendant that Mr. Henderson was unavailable for deposition until after October 4, 2013, the date stipulated by the parties as the cut-off for dispositive motions related to the bifurcated issue (Dkt. 127, Ex. 1).

The parties were thereafter unable to reach a compromise regarding the timing of Mr. Henderson's deposition, so on September 9, 2013, counsel for Plaintiff contacted the Court to request a status conference for the purpose of resolving the parties' dispute. Such a conference is currently scheduled for September 13, 2013, at 2:30PM. Nevertheless, counsel for Plaintiff expressed an intention to proceed with the deposition as scheduled (Dkt. 127, Ex. 1). In response, Plaintiff filed the instant motion.

As the Supreme Court stated in *Herbert v. Lando*, 441 U.S. 153, 177 (1979), "judges should not hesitate to exercise appropriate control over the discovery process." Thus, pursuant to Federal Rules of Civil Procedure 26(b)(2)(C) & 26(c)(1), Plaintiff's Motion for a Protective Order is **GRANTED**. Accordingly, the deposition of Scott Henderson, presently noticed for September 13, 2013, at 10:00AM, is adjourned.

Further, in light of the upcoming status conference, Plaintiff's Motion for an Order Compelling Discovery is **HELD IN ABEYANCE**. The Court will endeavor to resolve any and all remaining discovery disputes during the September 13, 2013 conference.

SO ORDERED.

Dated: September 12, 2013

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically submitted on September 12, 2013, using the CM/ECF system, which will send notification to all parties.

s/A. Chubb
Case Manager